



STAFF REPORT

DATE: October 10, 2023
TO: Mayor and City Councilors
FROM: Heather Richards, Community Development Director
SUBJECT: Ordinance No. 5139– Adopting a Housing Needs Analysis and Economic Opportunity Analysis as Addendums to the McMinnville Comprehensive Plan (Dockets G 1-20, and G 3-20)

STRATEGIC PRIORITY & GOAL:

 <p>GROWTH & DEVELOPMENT CHARACTER Guide growth & development strategically, responsively & responsibly to enhance our unique character.</p>	 <p>HOUSING OPPORTUNITIES (ACROSS THE INCOME SPECTRUM) Create diverse housing opportunities that support great neighborhoods.</p>
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OBJECTIVE/S: Strategically plan for short and long-term growth and development that will create enduring value for the community

OBJECTIVE/S: Conduct thorough and timely planning and forecasting to ensure that regulatory frameworks for land supply align with market-driven housing needs

Report in Brief:

This is the consideration of Ordinance No. 5139, reflecting the Planning Commission’s recommendation to the City Council to adopt the 2023 Housing Needs Analysis and Economic Opportunity Analysis as addendums to the McMinnville Comprehensive Plan, Volume 1. (The McMinnville Comprehensive Plan has three volumes: 1) Data; 2) Goals and Policies; and 3) Implementing Zoning Ordinance, Chapter 17 of the McMinnville Municipal Code).

Per ORS 197.296, the City of McMinnville needs to submit a Housing Needs Analysis to Department of Land Conservation and Development (DLCD) by December 31, 2023. Working with a Project Advisory Committee, the City also updated its Economic Opportunity Analysis.

This proceeding is a legislative land-use item for the City Council. The City Council is the final decision maker for this land-use action since it is an amendment to the McMinnville Comprehensive Plan.

Today’s action is to decide if the City Council would like to host a public hearing as part of their consideration or adopt an Ordinance effecting the recommendation of the Planning Commission.

Per Section 17.72.130(B) of the McMinnville Municipal Code:

Legislative hearings: Within 45 days following the public hearing on a comprehensive plan text amendment or other legislative matter, unless a continuance is announced, the Planning Commission shall render a decision which shall recommend either that the amendment be approved, denied, or modified:

1. *Upon reaching a decision the Planning Commission shall transmit to the City Council a copy of the proposed amendment, the minutes of the public hearing, the decision of the Planning Commission, and any other materials deemed necessary for a decision by the City Council;*
2. *Upon receipt of the decision of the Planning Commission, the City Council shall:*
 - a. *Adopt an ordinance effecting the proposed change as submitted by the Planning Commission, or*
 - b. *Adopt an ordinance effecting the proposed change in an amended form, or*
 - c. *Refuse to adopt the amendment through a vote to deny, or*
 - d. *Call for a public hearing on the proposal, subject to the notice requirements stated in Section 17.72.120(D).*

The Planning Commission hosted a public hearing and heard public testimony on September 7 and September 21, 2023, and voted to recommend adoption of the two documents with the following amendments:

- Reduce park land need by 62 acres in Appendix E of the Economic Opportunity Analysis.
- Consider removal of 49 acres of commercial land need associated with the site specific needs identified in the MAC Town 2032 Economic Development Strategic Plan, and consider removal of the 12 acres of commercial land need associated with the retail leakage analysis in the Economic Opportunity Analysis.

Three people provided testimony at the Planning Commission public hearing: 1) Mark Davis representing himself; and 2) Sid Friedman and Rob Hallyburton representing Friends of Yamhill County. Mark Davis also provided two written letters of testimony as did Friends of Yamhill County and Thousand Friends of Oregon. All testimony provided by Mark Davis, Friends of Yamhill County and Thousand Friends of Oregon expressed concerns with elements of the two documents, either in terms of legal compliance or the assumptions and data used by the Project Advisory Committee to make their recommendation to the Planning Commission.

The Planning Commission considered the testimony provided, advice from the City's legal counsel, Bill Kabeiseman from Bateman Seidel, advice from the City's consultant, Beth Goodman of ECONorthwest and city staff to make their recommendation to the City Council. The reduction in park land need was based on a mathematical error pointed out by Mark Davis in his public testimony. The consideration of the other two elements of the Economic Opportunity Analysis was based on a risk analysis of successful litigation if challenged by Friends of Yamhill

County and Thousand Friends of Oregon. (A further analysis of the public testimony received is provided in the “Discussion” section of this staff report.

The project website with the public record can be found at: [G 1-20, G 2-20 & G 3-20 Project Materials \(BLI/HNA/HS\) | McMinnville Oregon](#)

Background:

In 1994, the City of McMinnville entered into periodic review with the Department of Land Conservation and Development to start planning for future growth for the planning horizon of 2000 – 2020. The last urban growth boundary and growth planning effort had been for the planning horizon of 1980 – 2000. A Housing Needs Analysis was initially adopted in 2001, challenged, appealed and remanded back to the City for amendments and final adoption in 2003, with a new planning horizon of 2003 - 2023. An Economic Opportunity Analysis was prepared in 2001 and adopted in 2003 for the same planning horizon of 2003 - 2023. Both evaluations identified the need for additional land for housing, park land, institutional land and employment land. The City submitted a UGB amendment to the Department of Land Conservation and Development. That submittal was challenged resulting in a partial UGB amendment and remanded back to the City. After years of appeals, eventually resulting in an appeal to the Court of Appeals, the City elected to pause this work In 2013 electing not to invest more resources and staff time in the effort, resulting in the City not meeting their land need for housing and employment land for the planning horizon of 2003 – 2023. This led to increasingly constrained land supply for housing and employment development within the City of McMinnville’s urban growth boundary.

In 2018, the City of McMinnville initiated an effort to update its Housing Needs Analysis (HNA), Economic Opportunities Analysis (EOA), and Public Lands Analysis. After realizing the negative effects of constrained land supply on the City of McMinnville’s housing market and employment opportunities, the City elected to initiate the needs analysis to facilitate another effort at planning for growth in McMinnville. City Council directed staff to plan for both a twenty-year growth horizon (2021 -2041) as well as a fifty-year growth horizon (2021 – 2067) in order to adopt a future Urban Reserve Area so that the City did not find itself in the same predicament in the future.

The city engaged a consultant team and worked with a project advisory committee on a buildable lands inventory, housing needs analysis, and economic opportunities analysis throughout 2018 and 2019.

At the same time, during the 2019 Oregon Legislative Session, two house bills were adopted, HB 2001 and HB 2003. Both bills impacted state legislation and eventually, rulemaking relative to how cities implemented land needs analyses. Knowing that the legislation and rulemaking would take some time to enact, the City put a pause on their draft needs analyses and turned towards the 2013 urban growth boundary remand to see if that would lead to a quicker resolution to the city’s land supply issues rather than a new effort. City staff worked on a response to the Court of Appeals remand in 2020 and in April 2021 learned that the submittal had been approved by the Department of Land Conservation and Development and was not appealed.

In order to preserve their efforts from 2018 and 2019, in May 2020, the City of McMinnville submitted the following “PAPA” notices (Notice of Proposed Amendments) to DLCD:

- **HNA.** Housing Needs Analysis and Residential Buildable Land Inventory (June 2019 Draft).
- **Housing Strategy.** (June 2019 Draft).
- **EOA.** Economic Opportunities Analysis, Employment Land Buildable Land Inventory, and Other Land Needs (February 2020 Draft). The City subsequently completed additional updates to the February 2020 draft in June 2020 after the initial PAPA submittal to DCLD. The City subsequently submitted the updated draft as an amended PAPA notice in May 2021.

In addition to the HNA, Housing Strategy and EOA, the City prepared a memo updating the HNA (Addendum 1 to the HNA) in June 2020 to address any new discoveries since the June 2019 draft was completed, and an Urbanization Study that served as a summary of the HNA/EOA analysis. All of which were provided as part of the PAPA notices.

As part of the PAPA notice for these documents in May 2020, the City needed to provide a specific date for a public hearing, and the City elected to select May 20, 2021, for the public hearing date to provide enough time for the HB 2001 and HB 2003 rulemaking to conclude.

On May 20, 2021, the Planning Commission opened and continued the public hearing to May 18, 2023. And then on May 9, 2023, the City noticed that the public hearing would be continued to September 7, 2023, to consider the final documents. This was done to preserve the work and investment that went into the 2018/2019 effort and to just focus on a limited update in 2023. Legal counsel and DLCD staff concurred with the process.

Due to the actions that the City took in May 2020, the City was able to preserve the work that had already been done thus far to meet the HB 2003 mandate, but the buildable land inventory needed to be updated to reflect the new urban growth boundary amendment and the provisions of HB 2001 (2019 Legislative Session) needed to be applied to the capacity analysis.

The updated McMinnville Urbanization Report provides a summary of the key data and findings for the Housing Needs Analysis, Economic Opportunities Analysis, and Public Land Needs Analysis.

Population Forecast Used:

McMinnville’s 5-, 10-, 20-, and 46-Year Population Forecast, McMinnville UGB, 2021, 2026, 2031, and 2067

Source: Population Research Center, Portland State University, June 30, 2017.

36,238	38,985	41,813	47,498	62,803
2021	2026	2031	2041	2067
	(5-year)	(10-year)	(20-year)	(46-year)

(Note this is provided by Portland State University’s Portland Research Center and cities are required to use it per state law. It has been updated since the 2017 forecast was released, but the City made a policy decision to continue to use the 2017 population forecast so as not to rework the entirety of the documents to reflect a new forecast that was released in the summer of 2020 after the drafts had been completed. This is allowed by state law and is a policy

decision that was supported by DLCD staff, as it saved the City the costs and time that would be associated with redoing all of the work to reflect the new forecast.)

The documents discuss the different applicable statutory requirements and local policies that framed the discussion and recommendations of the project advisory committee as well as the decisions made by the project advisory committee that best reflected community values in terms of housing density, employment land needs and public land needs. The committee evaluated local data and planning scenario with the assistance of the consultant team and evaluated those scenarios within the regulatory framework of state laws, administrative rules and local comprehensive plan policies. and adopted policies to determine .

Land Deficiency Identified (gross buildable acres):

<i>Planning Period</i>	<i>Housing Land Need</i>	<i>Employment Land Need</i>	<i>Public / Institutional Land Need</i>	<i>Total</i>
<i>2021 – 2041 (Urban Growth Boundary)</i>	<i>202 Acres</i>	<i>29 Industrial 159 Commercial 188 Acres</i>	<i>32 Acres</i>	<i>422 Acres</i>

Note: this reflects the reduction of 62 acres of park land need per the Planning Commission recommendation but not the commercial land need reduction as the Planning Commission wanted the City Council to make that policy decision.

If a needs analysis shows a need for additional land, typically the City would be required to submit with the needs analysis how it was addressing that additional land need – either through land-use efficiencies that created higher density development within the existing urban growth boundary or an expansion of the urban growth boundary or both. However, the state recently passed statutory provisions that allow for a sequential UGB analysis providing cities with additional time to evaluate land-use efficiencies and a potential UGB expansion after submitting a needs analysis (OAR 660-025-0040).

In this case, the needs analysis showed the additional land need for approximately 484 additional acres for housing, industrial, commercial, and public development needs to meet the projected population growth in the 2021 – 2041 planning horizon. However, given the statutory deadline of December 31, 2023, to submit the needs analysis to the state, the City is working with the Department of Land Conservation and Development on a sequential UGB work plan, allowing the City to conduct an efficiency measures analysis in 2024, and an urban growth boundary amendment if warranted in 2025 after the efficiency measures analysis.

This work was started in 2018/2019 resulting in draft documents that needed to be updated to reflect the December 2020 (acknowledged by DLCD April 2021) urban growth boundary (UGB) amendment for the planning period of 2003 – 2023, and the recent mandates from the Oregon Legislature for missing middle housing code reforms as well as reduction of capacity analysis for rural residential lands within the UGB for more than 14 years per OAR 660-038-0170(6)(b).

There are three steps in planning for growth relative to land supply:

- 1) **Needs Analysis** – Identification of how much land is needed for housing, industrial, commercial and public land to support population growth for twenty years.
- 2) **Land-Use Efficiencies Analysis** – is there a way to reduce the additional land need by densifying the development within the existing urban growth boundary.
- 3) **Urban Growth Boundary Alternatives Analysis** – an evaluation of land within 1-mile radius of the existing urban growth boundary to identify the best land for the City's urban growth boundary expansion that is the least impactful to prime farm and forest land.

This is the consideration of the first step in the process – the needs analysis. Step 2 will follow in 2024, and Step 3 will follow in 2025 if warranted.

For decades McMinnville has struggled with the discussion of growth planning with impassioned dialogue and debate about what is best for McMinnville.

The reality though is that McMinnville must plan for growth. That is the basis of the Oregon land use system. Cities are meant to grow to accommodate future population growth at a higher density and intensity than the unincorporated county in order to preserve farm and forest land. This is one of the basic premises of Oregon land use planning. Growth should occur within the cities' urban growth boundaries at a higher level of density and intensity than rural areas. And if a city needs to expand its urban growth boundary to accommodate Oregon's future growth it should do so.

The Oregon land use system was never intended to prevent cities from expanding their city limits and urban growth boundaries in order to accommodate that growth. In fact, the system is set up to require cities to expand their urban growth boundaries if the analysis indicates the need to do so. All Oregon land use goals are intended to be considered in equal measure and no one land use goal is considered more important than another. It is just as important to provide adequate land supply to support the needed new housing and employment opportunities for future population growth as it is to protect farm and forest land. If that does not occur, then the system is no longer equitable as it is choosing one land use goal over another.

To put it in perspective:

- The City of McMinnville's urban growth boundary is approximately 8,155 acres. There is approximately 458,240 acres of land in Yamhill County. The City of McMinnville's current urban growth boundary accounts for 1.8% of the overall land acreage in Yamhill County.
- The City of McMinnville's city limits houses 32% of the county's population.
- If the UGB needed to expand by 422 acres to accommodate future growth to 2041, it would absorb 0.1% (1/10 of 1%) of the total land acreage in Yamhill County.
- If the UGB needed to expand by 422 acres to accommodate future growth to 2041, , and the expansion was all EFU land it would absorb approximately 0.2% (2/10 of 1%) of the total land EFU acreage in Yamhill County.

The law also provides the opportunity for McMinnville policymakers to make their own decisions about how dense they want to build their needed housing, and the amount and type of land needed to meet their economic development goals and strategies.

The law also provides the opportunity for individuals and organizations to appeal the decisions of the City.

McMinnville's previous growth planning effort endured 20 years of debates, challenges, and appeals, resulting in a constrained land supply system that has changed the dynamics of the community. Housing has become exponentially more expensive as production has dwindled with land supply constraints. Lower and moderate-income households are being displaced from the marketplace. Employers are struggling to recruit and retain workforce due to affordable housing supply issues. Commercial land deficits have affected the supply of retail options in McMinnville. Recent studies show that many of McMinnville's households drive out of town to shop for general merchandise that they do not feel they can access in McMinnville.

This initial land need process is about planning for and ensuring that McMinnville can accommodate the future population growth assigned to the city by the state. Ensuring that there is enough land to build the needed housing, parks, employment, and commercial opportunities necessary to sustain a growing community with its own unique quality of life for current and future residents in an equitable manner.

This step in the process is about identifying what the land need is for the community to absorb population growth based on the community's *existing values* for housing density, economic development opportunities, and public land amenities to ensure a standard of quality of life for McMinnville's current and future residents. This first step relies on historic data and adopted comprehensive plan policies to inform the analysis.

The next step in the process, the land-use efficiencies evaluation, will determine if the community wants to change how it develops by increasing housing and employment density and reducing the amount of commercial and public amenity options to preserve more farm and forest land adjacent to the community. During this process the community will be asked to evaluate rezoning land or changing comprehensive plan policies to reflect those changes that the community wants to enact.

The last step of the process, the urban growth boundary expansion analysis, evaluates all land surrounding the current urban growth boundary for the lowest classification of high-value farm and forest land that is suitable for urban development in order to preserve the highest classifications of high-value farm and forest land.

Discussion:

The Planning Commission hosted a public hearing on September 7, 2023. At that public hearing, they heard public testimony from Mark Davis (DAVIS), Sid Friedman and Rob Hallyburton. Sid Friedman and Rob Hallyburton were representing Friends of Yamhill County. Mark Davis expressed his concerns about the amount of park land need relative to the data in the record and past city performance, and the Friends of Yamhill County questioned some of the decisions of the Project Advisory Committee relative to assumptions of future projections based on past performance.

Since the written and oral public testimony had allegations of legal non-compliance and challenges about the data used by the consultant, the City asked Bill Kabeiseman of Bateman Seidel, (contracted legal counsel for the City of McMinnville for land use matters) and Beth Goodman of ECONorthwest to provide memorandums with their respective responses to the public testimony received. Those comments were then synthesized by city staff and provided to the planning commission with options on how to proceed, with an emphasis on those issues that were not legally compliant (none identified), those issues that had errors in the data (park land need), and those issues that the people testifying just did not agree with the Project Advisory Committee recommendations and were providing their own argument to persuade the Planning Commission to choose a different assumption or direction. (Please see Attachment D to this staff report, Public Testimony and City Rebuttal to Public Testimony)

There were over 50 people who volunteered to sit on three different Project Advisory Committees (Housing Needs Analysis, Economic Opportunity Analysis, and Public Land Needs) that met thirteen times over 20 months (2018 – 2020) and a Project Advisory Committee that met twice in 2023 to update the documents.

There were also two work sessions with City Council for feedback in 2019 and 2020, one joint work session with City Council and the Yamhill County Board of County Commissioners (2019), as well as three public open houses (2018, 2019). The Project Advisory Committee volunteers reviewed memorandums provided by the consultant and city staff as well as input gathered from the City Council and public open houses.

Much of the Friends of Yamhill County / Thousand Friends of Oregon (FRIENDS) persuasive arguments centered around encouraging the City to use the “safe harbors” in the laws. Safe Harbors are presumably not appealable in a challenge to the analysis. However, the laws also allow cities to make assumptions based on the best available data relative to the local conditions in their communities to ensure that future land need is meeting community values and needs. Both the safe harbors and local data scenarios were provided to the Project Advisory Committee for consideration. In most cases, the PACs chose to use local data for their recommendations.

FRIENDS has concerns about the data used by the PAC to make their recommendations. However, as is noted in both the Bateman Seidel memorandum and the ECONorthwest memorandum, the data used by the PAC is legally legitimate, and the best data available to them at the time.

Per OAR 660-024-0040(1), *The 20-year need determinations are estimates which, although based on the best available information and methodologies, **should not be held to an unreasonably high level of precision.** (Emphasis added)*

The Planning Commission discussed two of the items of contention at length with legal counsel and the consultant – Site Specific Needs Identified in the MAC Town 2032 Economic Development Strategic Plan (Exhibit 58 of the Economic Opportunity Analysis), and Retail Leakage (Exhibit 57 of the Economic Opportunity Analysis). FRIENDS argued that the City used a safe harbor to calculate the employment forecast based on population growth and then added to it these two additional elements. Although Goal 9 of the Oregon land use system very clearly states that cities must plan for enough land to meet their economic development needs based, including site specific needs based on their local economic development strategy, staff recommended removing these two items as there is not adequate case law to determine the legal risk if challenged. Planning Commission elected to defer this decision to the City Council.

If these two items were removed, it would reduce the commercial land approximately by 61 acres (the analysis needs to still be computed based on City Council direction as it is not a simple math equation since employment is assigned to these lands from the employment forecast and that will need to be adjusted which will impact other land need).

Attachments:

- Attachment A: *Draft Updated McMinnville Urbanization Report (September 2023)*
Note: this does not include the recommendations of the Planning Commission
- Attachment B: *Draft Updated McMinnville Housing Needs Analysis (September 2023)*
Note: this does not include the recommendations of the Planning Commission
- Attachment C: *Draft Updated McMinnville Economic Opportunities Analysis (September 2023)* Note: this does not include the recommendations of the Planning Commission
- Attachment D: Public Testimony Received and City Rebuttal to Public Testimony
- Attachment E: Planning Commission Minutes, September 7, 2023 and September 21, 2023.

Additional Documents Located on the Project Website: [G 1-20, G 2-20 & G 3-20 Project Materials \(BLI/HNA/HS\) | McMinnville Oregon](#)

- Friends of Yamhill County, Correction to the Record, 09.08.23
- City of McMinnville, Correction to the Record, 09.11.23
- Email from Heather Richards to Planning Commission, 09.11.23
- All Project Advisory Committee Meetings and Materials

Fiscal Impact:

The initial drafts of the Housing Needs Analysis and Economic Opportunity Analysis cost approximately \$165,000 in consultant fees plus staff support at \$75,000.

Thus far, the estimate for the City’s public hearing support, findings development and public testimony rebuttal is approximately \$15,000 for consultant and legal fees plus staff support of \$5,000.

City Council Options: Per Section 17.72.130(B) of the McMinnville Municipal Code:

Legislative hearings: Within 45 days following the public hearing on a comprehensive plan text amendment or other legislative matter, unless a continuance is announced, the Planning Commission shall render a decision which shall recommend either that the amendment be approved, denied, or modified:

1. *Upon reaching a decision the Planning Commission shall transmit to the City Council a copy of the proposed amendment, the minutes of the public hearing, the decision of the Planning Commission, and any other materials deemed necessary for a decision by the City Council;*

2. *Upon receipt of the decision of the Planning Commission, the City Council shall:*
 - a. *Adopt an ordinance effecting the proposed change as submitted by the Planning Commission, or*
 - b. *Adopt an ordinance effecting the proposed change in an amended form, or*
 - c. *Refuse to adopt the amendment through a vote to deny, or*
 - d. *Call for a public hearing on the proposal, subject to the notice requirements stated in Section 17.72.120(D).*

1. **DIRECT CITY STAFF TO DRAFT AN ORDINANCE** approving Dockets G 1-20 and G 3-20, adopting the Housing Needs Analysis and Economic Opportunity Analysis per the Planning Commission’s recommendation **WITH** the land need associated with the Specific Site Needs and Retail Leakage identified in the current Economic Opportunity Analysis.
2. **DIRECT CITY STAFF TO DRAFT AN ORDINANCE** approving Dockets G 1-20 and G 3-20, adopting the Housing Needs Analysis and Economic Opportunity Analysis per the Planning Commission’s recommendation **WITHOUT** including the land need associated with the Specific Site Needs and Retail Leakage identified in the current Economic Opportunity Analysis.
3. **CALL FOR A PUBLIC HEARING**, date-specific to a future City Council meeting. In order to meet the statutory deadline of December 31, 2023, the public hearing would need to be scheduled no later than October 24, 2023.
4. **REFUSE TO ADOPT THE ORDINANCE**